D.B. CIVIL SPECIAL APPEAL NO. 148/06
(National Insurance Co. Ltd. Vs. Smt. Bharati Solanki & Ors.)

Date of Order: 09.10.2006

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. GOPAL KRISHAN VYAS,J.

Mr. Sanjeev Johri, for the appellant.
Mr. M.S.Bishnoi, claimants respondents No. 1 to 3.
None for others.

Heard learned counsel for the parties.

This appeal is directed against the judgment dated 26.7.2006 passed by learned single judge in S.B.C.M.A. No. 1002/2006.

In this appeal, the appellant is an insurer, the respondent Nos.1 to 3 are claimants and respondent Nos. 4 & 5 have not appeared despite service. The accident took place on 19.2.2005 in which one Sh. Sanjay Solanki, who was an employee as field operator in IOC, died & whose wife and children are claimants.

The claimants have filed claim application for compensation on account of accidental death of Shri Sanjay Solanki in the sum of Rs. 97,90,808/- stating that the deceased was about 36 years of age at the time of death and was employed as Field Operator with Indian Oil Corporation, Bichhwal, Bikaner earning salary income of Rs. 29,906/- per month. The remaining period of service was 24 years.

The tribunal found that the accident was caused due to negligence of the driver of the truck and considering the net salary of the deceased after deductions on account of taxes and other contributions arrived at an amount which the deceased would spend on his family at Rs. 1,70,520/- per annum. By applying multiplier of 16 arrived on account of pecuniary loss reached at the figure of Rs. 27,28,320/- .

While filing appeal against the award by the insurer company, it sought permission to contest on the quantum of compensation for pecuniary loss awarded to the claimants, principally on the ground that the net income of the deceased was wrongly calculated and the multiplier of 13 only ought to have been allowed to annual income expended for the family. Permission was granted by the learned Single Judge to raise these contentions. But the learned Single Judge did not find any merit in the contention raised by the insurer company to interfere in the award of compensation. However, in the totality of facts held that the multiplier of 15 was to be applied for arriving at the pecuniary loss and the total sum awarded on account of pecuniary loss was reduced to Rs. 25,57,800/- instead of Rs. 27,73,320/ - awarded by the tribunal.

The same contention is raised before us by learned counsel for the appellant. We find that as per the schedule appended to the Motor Vehicle Act which has been accepted as in general adopting multiplier for the purpose of computing the pecuniary loss arising out of death in an accident taking into account age of deceased and his annual estimated income. As per this Schedule the multiplier of 16 is to be applied, in case the deceased was about 36 year of age at the time of accident but was below 40 years of age. In the appeal it was stressed that the deceased was 35 years and 2 months old at the time of death. Therefore, no legitimate grievance can be raised by the appellant for applying the multiplier of the 13 only because the deceased was of 36 years of age and the same has been accepted by learned Single Judge.

So far as the computation of income expendable on the family of the deceased is concerned, it is apparent that neither Motor Vehicles Tribunal nor learned Single judge has provided for any future prospects while computing income of the deceased for the purpose of finding annual income and multiplicand. In other words, if room is provided for considering the future prospects of 24 years of service left, the computation i.e. Annual income will be much higher than what the appellants are stating as per current salary certificate by disputing the non deductions of refund of loan in certain expenditure item.

That being the position no interference is called for by this court, accordingly the special appeal fails and is hereby dismissed. No costs.

(GOPAL KRISHAN VYAS),J. **(RAJESH BALIA),J.**

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